ments. As the parties to the sale of the security were competent to manage their own affairs, that agreement, fixing the value of the note, when fairly made, is as binding as any other contract. It is true that if the note was absolutely void, there might be an insuperable obstacle to a recovery on it, however fairly acquired. But in this particular the English statutes against usury differ from our own. The former declared that all securities made in violation of them were "utterly void;" 13 Eliz. cap. 8; 3 Hen. vii. c. 5; 13 Geo. 3 c. 63. The latter contains no such provision. The result was that the English courts were bound to declare that all such securities were absolutely void even in the hands of innocent purchasers. But in this State the law has always been that even between the original parties such securities are valid for the real debt and legal interest. The excess cannot be recovered by one who participated in the contrivance to evade the statute, because he has no right to recover at law what the law prohibits him from contracting for or receiving. But as an innocent purchaser of such a security violates no law, he is of course entitled to recover the amount which, on the face of the instrument, appears to be due. The District Court was therefore correct in giving judgment for the plaintiff.

Judgment affirmed.

RECENT ENGLISH DECISIONS.

Court of Queen's Bench, Hilary Term,—January, 1856.

HAWKINS *vs.* TWYZILL.

The rule which deprived the seamen of wages if no freight was earned, does not apply to the master of a ship; and therefore, where a ship was lost, the administratrix of the captain was entitled to maintain an action for wages for the period of his service before the loss.

This was an action by the plaintiff, as administratrix, against the owner of the ship Britannia for wages due to the deceased as captain. The defendant paid 12*l.* into court. On the trial, before Crowder, J., at the Summer Assizes at Durham in 1855, it appeared that the deceased was engaged for the voyage at 10*l.* per month, and

that the ship sailed from Cardiff to Alicante, in Spain, where she discharged her cargo, and thence proceeded on her voyage, and was lost. The plaintiff claimed 60*l.*, being at the rate of 10*l* per month from the time of the sailing from Cardiff to the time of the loss. The defendant contended that 12*l.* covered the amount of wages up to the time of the arrival of the ship at Alicante, and objected that the contract was entire, and as there was no proof that the ship had earned freight subsequently to her sailing from Alicante, wages which accrued subsequently could not be recovered. The learned judge directed a verdict for the plaintiff for 18*l.* In the following Michaelmas Term, (Nov. 5),

Temple obtained a rule nisi for a new trial, on the ground of misdirection; against which, in this term, (Jan. 17),

Atherton and *Digby Seymour* showed cause.—The maxim in our maritime law, that freight is the mother of wages, Lord Stowell, in *The Neptune*, (1 Hagg. 227, 231), does not apply to the captain. He may insure his wages. [Lord CAMPBELL, C. J.—Does not that rather show that his wages would be lost unless they were insured?] In Maude & Pollock on Shipping, p. 216, it is said, "The law of England, as of most other countries, forbids, on grounds of public policy, the insurance of seamen's wages, or of any equivalent which they may be entitled to receive in their stead. This rule does not, however, apply to the wages of the master." And in p. 55, "Unlike the other mariners, he may insure his wages, since the objections in the former case do not apply to that of the master, who is entitled to his wages although the ship be lost or captured;" citing *King* vs. *Glover* (2 N. R. 206) and *Webster* vs. *De Tastet*, (7 T. R. 157). In the former case, Chambre, J., said, (p. 210), "The common law follows the marine law in not allowing wages to be due till the safe arrival of the ship. This rule applies to the mariners, but there is no decision in the marine law prohibiting the captain from recovering his wages up to the time his ship is captured. Indeed, the captain and the mariners are treated as very different subjects of consideration in the marine law." For instance, the master had no lien on the ship or freight for his wages, (*Wilkins* vs. *Carmichael*, 1 Dougl. 101; *Smith* v. *Plummer*, 1 B. & Ad. 575), until the law was altered

by sec. 16 of Stat. 7 & 8 Vict. c 112, and sect. 191 of the Merchant Shipping Act, 1854, (17 & 18 Vict. c. 104); also the master cannot sue in the Admirality Court for his wages. (Sir W. Scott, in *The Favorite*, 2 W. Rob. 232, 237,) [CROMPTON, J., referred to *The Caledonia*,] In 1 Arn. Ins. 208, it is said," The principle upon which this rule"—viz. that seamen are not allowed to insure their wages —" is founded, is held not to apply to the master, who is regarded as a person of too much trust and character to be rendered indifferent to the fate of the adventure merely by having secured his own interest in it." [WIGHTMAN J.—If the captain is entitled to wages, though the ship be lost, what is the risk against which he insures?] The failure of wages which he would have earned during the period between the loss of the ship and the end of the voyage. By sect. 17 of stat. 7 & 8 Vict. c. 112," in all cases of wreck or loss of the ship, every surviving seaman shall be entitled to his wages up to the period of the wreck or loss of the ship, whether such ship shall or shall not have previously earned freight; provided the seaman shall produce a certificate from the master or chief surviving officer of the ship, to the effect that he had exerted himself to the utmost to save the ship, cargo and stores." The master cannot give himself a certificate; and there being no provision for the payment of wages to the captain in the case of wreck or loss of the ship, shows that the legislature considered that he was entitled at common law. The term " seaman" is not made by the interpretation clause, sect. 63, to include the master. There is the same silence respecting the master, in sect. 183 of the Merchant Shipping Act, 1854, (17 & 18 Vict. c. 104).

Jan. 21.—*Temple* and *Unthank*, contra.—The doctrine contended for on the other side is not to be found in the older text-writers, though the distinction between the master and the mariner in other matters is noticed. In Lord Tenterden on Shipping, part 5, c.2, p. 619, 7th ed., which was written after the decision in *King* vs. *Glover*, (2 N. R. 206), it is said, "All that is said in this and the following chapter respecting seamen is to be understood of all the officers in the ship except the master, and of him also if the subject is not inapplicable to his situation and character;" and in p. 625," The

payment of wages is generally dependent upon the payment of freight; if the ship has earned its freight, the seamen who have served on board the ship have in like manner earned their wages." Again, in p. 631, "In the case of shipwreck it is the duty of the seamen to exert themselves to the utmost to save as much as possible of the vessel and cargo; if the cargo is saved, and a proportion of the freight paid by the merchant in respect thereof, it seems, upon principle, that the seamen are also entitled to a proportion of their wages, and this is expressly directed by the French ordinance." These passages are applicable to the master as well as the seamen, because they have reference to the point whether the voyage is profitable. So the contract for the wages of the master as well as of the seamen is entire for the whole voyage. [They cited Lord Tenterden on Shipping, part 5, c. 3, p. 638.] [Lord CAMPBELL, C. J.—Generally the master is appointed, not for a particular voyage, but at monthly wages, in whatever trade the ship is employed. He is put on the registry as master, and so remains from voyage to voyage. CROMPTON, J.—His duties are not confined to the particular voyage; he has duties while the ship is in port.] No practice is observed in mercantile transactions of appointing the master generally for all voyages. The master, in practice, only gets wages during the voyage and for the voyage; though, if he is actually employed about the vessel in the ship's port, he is entitled to wages pro tanto. While he is in port he does not get his keep, and his name may be taken off the register. There is an implied contract for each voyage, and there is no reason why his wages should not depend upon freight being earned, just as much as the wages of the seamen. [CROMPTON, J.—If Lord Tenterden meant to lay down any other rule than that stated in *King* vs. *Glover*, (2 N. R. 206), he would probably have so said.] That was an insurance case, and the dicta of Chambre, J. were unnecessary; and the true reason of the decision in that case is, that the captain being in greater trust and confidence, it is assumed that he will not be influenced by motives to which the mariners are subject. (Park. Ins. 11, 12, 8th ed.) Stat. 17 & 18 Vict. c. 104, s. 103, which was past to correct the evils of former

legislation, relaxed the rule in favor of the mariners, but not in favor of the master. [They also referred to sect. 109.]

Lord CAMPBELL, C. J.—The question upon which our judgment turns is, whether the maxim that freight is the mother of wages, applies to the master of a ship. The facts of this case are, that the master was engaged by the defendant at the wages of 10*l.* a month; that he had served four months on board, acting as master from the time when the ship sailed from Alicante until it went down and was lost. The question is, whether his representative is debarred from making this claim because no freight was earned between the sailing from Alicante and the loss of the ship. No authority was shown in which it has been expressly decided that the master is included in the rule, but it was urged strongly on the other side that there is no decision to exclude the master from the rule, and that no text-writer until very lately has made any distinction in this respect between the master and an ordinary seaman. That there has been no decision may be accounted for from the circumstance that it was understood that the rule did not apply to the master, and therefore the claim of the master was never resisted, and there was no occasion to bring an action, whereby the question should receive a judicial decision. Until Arnauld on Insusance, and the more recent treatise of Pollock & Maude on Shipping, it had not been expreesly laid down that the rule did not apply to the master, but in all the text-writers it seems to have been taken for granted; and the reasoning on which it has been so laid down procceds on that in *King* vs. *Glover* (2 N. R. 206) and *Webster* vs. *De Tastet*, (7 T. R. 157), where it was held that the master's wages might be insured. All the courts have taken for granted that the master's wages did not depend on freight; and there is the express dictum of that most eminent judge, Chambre, J., who gives it as the ratio decidendi in *King* vs. *Glover*. The Legislature, in stat. 7 & 8 Vict. c. 112, and the more recent statute, 17 & 18 Vict. c. 104, legislated on the supposition that the rule did not apply to the master, because in stat. 7 & 8 Vict. c. 112, by which the supposed hardship of the common rule in favor of seamen is removed, no mode is pointed out in which the master of the ship s relieved; and stat. 17 & 18 Vict. c. 104, s. 183, and other sec-

tions which are applicable, give no remedy to the master, which it is clear that they would have done if the Legislature had thought that he was within the rule. Generally speaking, the sailors are engaged for the voyage, and the completion of the voyage was made by the common law the contingency on which their wages were earned. But the engagement of the master and his functions are different from those of the mariners; he is not engaged for the voyage, but as master of the ship; he is master before the voyage begins; he hires the men, and when the ship has reached the end of its voyage and has delivered its cargo, his functions continue —he is still master of the ship, and entitled to the wages which he has stipulated for. When engaged for distant voyages he is generally an educated man, who it is supposed will not from interested and sordid motives relax from his duties; and therefore it is not necessary to stimulate his zeal and attention under perilous circumstances, by making the payment of his wages depend on the successful termination of the voyage. These are the reasons which seem to have led to the distinction between the master and the mariners in this respect.

COLERIDGE, J.—I confess that the point is new, whether the rule in question applies to the master: there is no express authority. Then we must look to principle, and see whether the situation of the parties is the same. The situation of mariners may be considered partly in respect of the term for which they contract, and partly in respect of their duties; and it was necessary to put this screw upon them, so that they might not only be honest, but earnest and zealous in the performance of services often very perilous. Does the same reason exist with regard to the master? In the first place, he is not ordinarily engaged for the voyage; he has duties to perform in harbor as well as at sea; and he is usually in a different position of life. Therefore there is a difference in the contract and character of the parties. Also, in the analogous case of the insurance of wages, it has been decided on the same ground that a mariner cannot insure his wages; but that rule has been held not to apply to the master. The third observation is, that in the statutes by which the Legislature mitigated the rule with regard to seamen, it is silent as to

the master, though the same reasons existed with regard to the master, if the rule included him.

WIGHTMAN, J.—The argument for the defendant is founded on the assumption that the rule, that the wages of the seamen are not recoverable if the ship is lost, applies. But the situation of the master is essentially different from that of the mariners. He has often a special interest in the ship, and he is bound to make a contract for the hiring of the other mariners. There is no case in which it has been held, that the master is included in the rule that freight is the mother of wages. But there is the case of *King* vs. *Glover*, (2 N. R. 206), fifty years ago, which has never been controverted, in which the distinction was taken between the master and the mariners. Lord Mansfield, C. J., whose ruling at the trial was called in question, says, (p. 209), "When the case of *Webster* vs. *De Tastet* was first cited to me at Nisi Prius, it did not occur to me that there was any difference in the rule of law as applied to the captain of a ship and the mariners; but upon considering the two cases, both upon principle and in practice, there does appear a most material difference." He adds, that the regulation against the insurance of wages is founded on the marine law, which does not allow the mariners any wages unless the ship earn freight; and then he takes, in terms, the very distinction between the captain and the mariners which is now insisted on for the plaintiff. This case, which is founded on the essential difference between the captain and the mariners with respect to wages, has, as far as we know, been always acquiesced in, and must be taken to be law. The statutes also, which have been referred to, show that the Legislature thought that the master was not within the rule.

CROMPTON, J., concurred. Rule discharged.